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Paper No. 11

In re application of  
Shigeru Hatakenaka  
Serial No. 09/618,306  
Filed: July 18, 2000  
For: VINEGAR USING SEA WATER AND SEASONING THEREOF

DECISION ON  
PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed February 14, 2003, for failure to timely reply to the office action dated May 24, 2002 and the Non-Responsive Amendment Noticed mailed December 17, 2002.

**DECISION**

Since petitioner asserts that a timely response was filed, the request is accepted as a petition under 37 C.F.R. 1.181 (no fee). A review of the petitioner's evidence provided with the instant petition indicates that the request has merit.

Applicants' argue that the case was not properly abandoned in view of critical dates of the communications between themselves and the Office. Specifically, the statutory period to reply to the first Office Action, dated May 24, 2002, had expired on November 24, 2002, and in view of such, applicants argue/contend that "it was the undersigned's opinion that any statutory period to respond to the office action of May 24, 2002 had expired and as a result, the one month period set forth by the Examiner, in a Notice of Non-Responsive Amendment mailed December 17, 2002, was now a new period to respond which was not statutory and was therefore extendible for up to five months under the provisions of 37 CFR 1.136(a)".

The arguments set forth by applicants' are correct, and hence persuasive. The MPEP confirms that under 1.136(a):

"§ 1.136 Extensions of time.

(a)

(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed..."

Therefore, the Notice of Abandonment dated January 23, 2003 is hereby withdrawn.

The Petition is **GRANTED.**

The case will be delivered to the LIE and returned to pending status. Additionally, the extensions of time, request for RCE, and amendment will be entered. After such is completed, the case will be forwarded to the examiner for prompt consideration.

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